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GOV. MSG. NO. 1131

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 22, 2013

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 22, 2013, the following bill was signed into law:

SB870 SD1 HD1

RELATING TO USE OF FORCE BY PERSONS
WITH SPECIAL RESPONSIBILITY FOR CARE,
DISCIPLINE, OR SAFETY OF OTHERS
ACT 031 (13)

NEIL ABERCROMBIE
Governor, State of Hawaii

A BILL FOR AN ACT

RELATING TO USE OF FORCE BY PERSONS WITH SPECIAL RESPONSIBILITY
FOR CARE, DISCIPLINE, OR SAFETY OF OTHERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 703-309, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§703-309 Use of force by persons with special
4 responsibility for care, discipline, or safety of others. The
5 use of force upon or toward the person of another is justifiable
6 under the following circumstances:

7 (1) The actor is the parent [æ], guardian, or other
8 person similarly responsible for the general care and
9 supervision of a minor, or a person acting at the
10 request of the parent, guardian, or other responsible
11 person, and:

12 (a) The force is employed with due regard for the age
13 and size of the minor and is reasonably related
14 to the purpose of safeguarding or promoting the
15 welfare of the minor, including the prevention or
16 punishment of the minor's misconduct; provided
17 that there shall be a rebuttable presumption that



1 the following types of force are not justifiable
2 for purposes of this subsection: throwing,
3 kicking, burning, biting, cutting, striking with
4 a closed fist, shaking a minor under three years
5 of age, interfering with breathing, or
6 threatening with a deadly weapon; and

7 (b) The force used [~~is not designed to cause or known~~
8 ~~to~~] does not intentionally, knowingly,
9 recklessly, or negligently create a risk of
10 causing substantial bodily injury, disfigurement,
11 extreme pain or mental distress, or neurological
12 damage.

13 (2) The actor is a principal, the principal's agent, a
14 teacher, or a person otherwise entrusted with the care
15 or supervision for a special purpose of a minor, and:

16 (a) The actor believes that the force used is
17 necessary to further that special purpose,
18 including maintenance of reasonable discipline in
19 a school, class, other group, or at activities
20 supervised by the department of education held on
21 or off school property and that the use of force
22 is consistent with the welfare of the minor; and



- 1 (b) The degree of force, if it had been used by the
- 2 parent or guardian of the minor, would not be
- 3 unjustifiable under paragraph [~~(1)(b)~~] (1).
- 4 (3) The actor is the guardian or other person similarly
- 5 responsible for the general care and supervision of an
- 6 incompetent person, and:
 - 7 (a) The force is employed with due regard for the age
 - 8 and size of the incompetent person and is
 - 9 reasonably related to the purpose of safeguarding
 - 10 or promoting the welfare of the incompetent
 - 11 person, including the prevention of the
 - 12 incompetent person's misconduct, or, when such
 - 13 incompetent person is in a hospital or other
 - 14 institution for the incompetent person's care and
 - 15 custody, for the maintenance of reasonable
 - 16 discipline in the institution; and
 - 17 (b) The force used is not designed to cause or known
 - 18 to create a risk of causing substantial bodily
 - 19 injury, disfigurement, extreme pain or mental
 - 20 distress, or neurological damage.



1 (4) The actor is a doctor or other therapist or a person
2 assisting the doctor or therapist at the doctor's or
3 therapist's direction, and:

4 (a) The force is used for the purpose of
5 administering a recognized form of treatment
6 which the actor believes to be adapted to
7 promoting the physical or mental health of the
8 patient; and

9 (b) The treatment is administered with the consent of
10 the patient, or, if the patient is a minor or an
11 incompetent person, with the consent of the
12 minor's or incompetent person's parent or
13 guardian or other person legally competent to
14 consent in the minor's or incompetent person's
15 behalf, or the treatment is administered in an
16 emergency when the actor believes that no one
17 competent to consent can be consulted and that a
18 reasonable person, wishing to safeguard the
19 welfare of the patient, would consent.

20 (5) The actor is a warden or other authorized official of
21 a correctional institution, and:



- 1 (a) The actor believes that the force used is
2 necessary for the purpose of enforcing the lawful
3 rules or procedures of the institution; and
- 4 (b) The nature or degree of force used is not
5 forbidden by other provisions of the law
6 governing the conduct of correctional
7 institutions; and
- 8 (c) If deadly force is used, its use is otherwise
9 justifiable under this chapter.
- 10 (6) The actor is a person responsible for the safety of a
11 vessel or an aircraft or a person acting at the
12 direction of the person responsible for the safety of
13 a vessel or an aircraft, and:
- 14 (a) The actor believes that the force used is
15 necessary to prevent interference with the
16 operation of the vessel or aircraft or
17 obstruction of the execution of a lawful order,
18 unless the actor's belief in the lawfulness of
19 the order is erroneous and the actor's error is
20 due to ignorance or mistake as to the law
21 defining authority; and



1 (b) If deadly force is used, its use is otherwise
2 justifiable under this chapter.

3 (7) The actor is a person who is authorized or required by
4 law to maintain order or decorum in a vehicle, train,
5 or other carrier, or in a place where others are
6 assembled, and:

7 (a) The actor believes that the force used is
8 necessary for that purpose; and

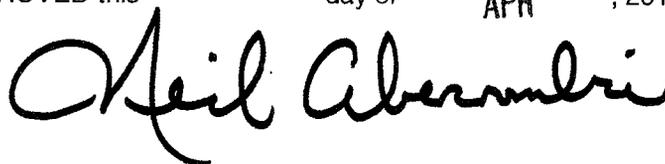
9 (b) The force used is not designed to cause or known
10 to create a substantial risk of causing death,
11 bodily injury or extreme mental distress."

12 SECTION 2. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act shall take effect on July 1, 2013.

APPROVED this 22 day of APR, 2013



GOVERNOR OF THE STATE OF HAWAII